

1 Dena C. Sharp (State Bar No. 245869)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (State Bar No. 273000)
GIRARD SHARP LLP
4 601 California Street, Suite 1400
5 San Francisco, California 94108
6 Tel: (415) 981-4800
7 Fax: (415) 981-4846
dsharp@girardsharp.com
jelias@girardsharp.com
apolk@girardsharp.com

8 Eric H. Gibbs (State Bar No. 178658)
9 Amy M. Zeman (State Bar No. 273100)
GIBBS LAW GROUP LLP
10 505 14th Street, Suite 1110
11 Oakland, CA 94162
12 Tel: (510) 350-9700
amz@classlawgroup.com

13 Adam B. Wolf (State Bar No. 215914)
14 Tracey B. Cowan (State Bar No. 250053)
PEIFFER WOLF CARR & KANE, A
15 **PROFESSIONAL LAW CORPORATION**
4 Embarcadero Center, Suite 1400
16 San Francisco, CA 94111
17 Tel: (415) 766-3545
18 Fax: (415) 402-0058
awolf@pwcklegal.com
tcowan@pwcklegal.com

19 *Counsel for Plaintiffs and Interim Class Counsel*

20 [Additional Counsel on Signature Page]

22 **UNITED STATES DISTRICT COURT**
23 **NORTHERN DISTRICT OF CALIFORNIA**
24 **SAN FRANCISCO DIVISION**

25 IN RE PACIFIC FERTILITY CENTER
26 LITIGATION

Elizabeth J. Cabraser (State Bar No. 083151)
Lexi J. Hazam (State Bar No. 224457)
Sarah R. London (State Bar No. 267083)
Tiseme G. Zegeye (State Bar No. 319927)
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Tel.: (415) 956-1000
Fax: (415) 956-1008
ecabraser@lchb.com
lhazam@lchb.com
slondon@lchb.com
tzegeye@lchb.com

Case No. 3:18-cv-01586-JSC

27 **JOINT CASE MANAGEMENT**
28 **STATEMENT**

Judge: Hon. Jacqueline Scott Corley

1 Pursuant to Civil Local Rule 16-10(d), the parties provide this Joint Case Management Statement
2 in advance of the Further Case Management Conference scheduled for April 9, 2020.

3 **I. ADR UPDATE**

4 The parties participated in a mediation session with Hon. Edward A. Infante (Ret.) on March 16.
5 Judge Infante has continued discussions with each of the parties and the mediation remains ongoing. The
6 parties will be prepared to provide a status update at the conference.

7 **II. DEVELOPMENTS SINCE THE LAST STATUS CONFERENCE**

8 Since the February 27, 2020 case management conference and class certification hearing, there
9 have been several developments.

10 First, as a result of the COVID-19 crisis, Plaintiffs have taken the previously noticed March and
11 April depositions of PFC doctors and Pacific MSO embryologists off-calendar on the understanding that
12 these noticed parties will make their witnesses available in May, unless the travel and work restrictions
13 remain in place, in which case the parties will confer concerning how to proceed, as explained in further
14 detail below.

15 Second, the parties have continued to meet and confer concerning existing (and some new)
16 discovery issues, as outlined below.

17 **III. DISCOVERY STATUS**

18 **Case Schedule.** Defendants have raised with Plaintiffs adjusting the case schedule in light of the
19 significant challenges they contend the COVID-19 crisis has presented for discovery and
20 depositions. While the parties have not discussed any specific proposed alterations to the current
21 schedule, they have agreed to confer regarding the case schedule, and will be prepared to update the
22 Court at the conference.

23 **Deposition Scheduling & COVID-19.** While the parties had previously agreed on dates in
24 March and April 2020 for the depositions of four PFC physicians and four Pacific MSO embryologists,
25 in light of the COVID-19 crisis, the parties agreed to reschedule the depositions for May 2020, with the
26 understanding that the parties will revisit the schedule and meet and confer about the best way to
27 proceed if it appears that the stay-home and shelter-in-place orders will remain in effect by then. Pacific
28 MSO has provided May dates for the embryologist depositions. By April 10, PFC and Prelude will

1 provide May dates for the depositions of the physicians and a 30(b)(6) witness designated to testify on
2 financial topics, respectively.¹ The parties are meeting and conferring about time limits for these
3 depositions as the noticed depositions will exceed the 90-hour limit raised at the previous case
4 management conference.

5 **Disputes Regarding Additional Depositions.** The parties are meeting and conferring on the
6 need for additional depositions that Plaintiffs believe good cause exists to take. Prelude disagrees that
7 these remaining depositions are relevant or necessary and Defendants object to Plaintiffs' proposed
8 extension of the previously agreed-to deposition limits. Plaintiffs have agreed to refrain from
9 immediately noticing the additional depositions they have raised with Prelude and have agreed to
10 continue to confer regarding the need for the depositions. Plaintiffs and Defendants reserve their rights
11 to seek judicial relief if they cannot reach an agreement.

12 **Outcome Data.** The parties have reached impasse on the issue of Pacific MSO's production of
13 outcome data for a series of thaws Pacific MSO performed on Tank 4 materials in the weeks following
14 the incident. Pacific MSO has withheld the only documentation relating to those thaws as privileged and
15 work product. Plaintiffs disagree that the test thaw outcome data is properly withheld as privileged or
16 work product, and the parties have agreed to submit the issue to the Court for resolution by way of joint
17 letter no later than April 16.

18 In addition to the thaw outcome data issue referenced above, the parties continue to confer
19 regarding Pacific MSO's recent production of egg and embryo data, including Plaintiffs' requests for
20 updated Tank 4 outcome data comparable to data produced to reporting bodies for non-Tank 4 eggs and
21 embryos. The parties will be prepared to update the Court regarding the status of their discussions at the
22 conference.

23 **Prelude Document Production.**

24 **Financial Condition Documents.** Plaintiffs and Prelude continue to confer regarding Prelude's
25 production of documents concerning its financial condition in response to Plaintiffs' punitive damages

26 ¹ Plaintiffs have also requested a follow up Rule 30(b)(6) deposition on Prelude's organizational
27 structure, but at Prelude's request, are exploring possible alternatives—including propounding
28 interrogatories, or providing alternative organizational topics—and will be prepared to update the Court
on status at the conference.

1 discovery. The parties are conferring over Prelude's search for and production of documents and will be
2 prepared to update the Court concerning their meet and confer efforts.

3 **Status of Document Production.** Plaintiffs sent Prelude correspondence relating to the recent
4 production of documents by a third party (Lee Equity), which raised questions for Plaintiffs about the
5 completeness of Prelude's production. Prelude contends that its production is complete. The parties have
6 agreed to confer about this issue and will be prepared to provide a status update at the conference.

7 **Tank Testing.** Further tank testing occurred on March 11, 12, and 13. The parties are evaluating
8 the results, and some metallurgical testing of specific samples is ongoing. The parties do not currently
9 contemplate additional testing, but further analysis of the data gathered during the recent testing session
10 and the metallurgical outcomes may alter that determination.

11 **Chart Discovery.** Plaintiffs served requests for admission, interrogatories, and production of
12 documents on Chart in January. Chart responded in February, and following the February 27 conference
13 provided supplemental responses to interrogatories and requests for production. Plaintiffs are evaluating
14 Chart's responses and will raise any issues the parties are unable to resolve after conferring, in the event
15 they arise.

16 **Authentication of Documents.** Plaintiffs have requested that Defendants stipulate to the
17 authenticity of documents they produced in the litigation to avoid the need for depositions of document
18 custodians or requests for admission. The parties have not yet reached agreement, but are conferring and
19 will be prepared to update the Court concerning this issue at the conference.

20 **Privilege Log Dispute.** Following the Court's March 16 Order, Dkt. No. 423, Prelude and
21 Pacific MSO submitted 17 documents for *in camera* review on March 20, 2020.

22 **IV. PFC ARBITRATION PROCEEDINGS AND THIRD-PARTY COMPLAINT**

23 Arbitration proceedings have not yet begun. PFC has paid its fees in 91 cases. Its counsel reports
24 that it has processed invoices for an additional 100 cases and is awaiting payment for those cases by the
25 insurance carrier. In addition to those already processed, PFC anticipates processing payments for 11
26 other cases for which they recently received further information.

27 In view of the fact that arbitrations have been delayed nearly 9 months (most were initiated July
28 2019), and PFC has repeatedly committed—yet failed to—pay its fees, Plaintiffs have requested that

1 PFC pay its arbitration fees no later than April 9.² Plaintiffs reserve their rights to seek to compel PFC to
2 return to this Court in the event its continued failure to pay its fees prevents Plaintiffs' ability to seek
3 relief in arbitration in accordance with the Court's order.

4 The Court dismissed Chart's third-party complaint with leave to amend at the February 27
5 hearing. Pursuant to stipulation, Chart is scheduled to file its amended third-party complaint on April 9.

6 * * *

7 The parties request that the Court hold another status conference at the Court's convenience in
8 mid- to late May, with a further joint case management statement to be submitted a week before the
9 conference.

10 Dated: April 3, 2020

GIRARD SHARP LLP

11 By: /s/ Dena C. Sharp

12 Dena C. Sharp (State Bar No. 245869)
13 Jordan Elias (State Bar No. 228731)
14 Adam E. Polk (State Bar No. 273000)

GIRARD SHARP LLP

15 601 California Street, Suite 1400
16 San Francisco, California 94108
17 Tel: (415) 981-4800
18 Fax: (415) 981-4846
dsharp@girardsharp.com
jelias@girardsharp.com
apolk@girardsharp.com

19 Eric H. Gibbs (State Bar No. 178658)
20 Dylan Hughes (State Bar No. 209113)
21 Amy M. Zeman (State Bar No. 273100)

GIBBS LAW GROUP LLP

22 505 14th Street, Suite 1110
23 Oakland, CA 94162
24 Tel: (510) 350-9700
amz@classlawgroup.com

25 Adam B. Wolf (State Bar No. 215914)
26 Tracey B. Cowan (State Bar No. 250053)

27 ² PFC most recently apprised the Court that its fees would be paid by the end of March 2020. Dkt.
28 No. 401. At a status conference in November 2019, PFC said that it was in the process of paying its fees.

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25
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27
28

**PEIFFER WOLF CARR & KANE, A
PROFESSIONAL LAW CORPORATION**

4 Embarcadero Center, Suite 1400

San Francisco, CA 94111

Tel: (415) 766-3545

Fax: (415) 402-0058

awolf@pwcklegal.com

tcowan@pwcklegal.com

Elizabeth J. Cabraser (State Bar No. 083151)

Lexi J. Hazam (State Bar No. 224457)

Sarah R. London (State Bar No. 267083)

Tiseme G. Zegeye (State Bar No. 319927)

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

275 Battery Street, 29th Floor

San Francisco, CA 94111-3339

Tel.: 415.956.1000

Fax: 415.956.1008

ecabraser@lchb.com

lhazam@lchb.com

slondon@lchb.com

tzegeye@lchb.com

Interim Class Counsel

Joseph G. Sauder (*pro hac vice*)

SAUDER SCHELKOPF LLC

555 Lancaster Avenue

Berwyn, Pennsylvania 19312

Tel: (610) 200-0580

jgs@sstriallawyers.com

Plaintiffs' Counsel

Dated: April 3, 2020

By: /s/ Erin M. Bosman

Erin M. Bosman (State Bar No. 204987)

William F. Tarantino (State Bar No. 215343)

Julie Y. Park (State Bar No. 259929)

MORRISON & FOERSTER LLP

425 Market Street

San Francisco, California 94105

Tel: (415) 268-7000

EBosman@mofo.com

WTarantino@mofo.com

JuliePark@mofo.com

*Counsel for Defendant Prelude Fertility, Inc. and
Pacific MSO, LLC*

Dated: April 3, 2020

By: /s/ Molly Moriarty Lane
Molly Moriarty Lane (State Bar No. 149206)
Benjamin P. Smith (State Bar No. 197551)
Megan A. Suehiro (State Bar No. 316104)
MORGAN, LEWIS & BOCKIUS LLP
One Market Street, Spear Street Tower
San Francisco, CA 94105-1596
Tel: (415) 442-1000
Fax: (415) 442-1001
molly.lane@morganlewis.com
benjamin.smith@morganlewis.com
megan.suehiro@morganlewis.com

Counsel for Defendant Chart Inc.

FILER'S ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, Dena C. Sharp attest that concurrence in the filing of this document has been obtained.

Dated: April 3, 2020

/s/ *Dena C. Sharp*

Christina (Dena) C. Sharp